

ID: CCA-619102-13

Office:

UILC: 7453.00-00; 0099.33-04

Number: **201351021**

Release Date: 12/20/2013

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**From:**

**Sent:** Thursday, June 13, 2013 11:48 AM

**To:**

**Cc:**

**Subject:** Representation Issue

Thank you for the update and for resolving the matter based on our conversation. As you asked, I'm confirming here my earlier advice over the phone. In my view (also the Director of [redacted]'s view), an individual taxpayer's immediate family member, such as a parent, may represent the taxpayer before the IRS, including before the Office of Appeals. No question that the immediate family member has only limited practice rights on behalf of the taxpayer before the IRS—namely, the designated representative may not represent other taxpayers who are not immediate family members—but the scope of practice is not limited to examinations or practice before revenue agents and compliance personnel.

Circular 230 allows for limited practice in certain circumstances. Under section 10.7(c)(1) of Circular 230, “an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service . . . , even if the taxpayer is not present, provided the individual presents satisfactory identification and proof of his or her authority to represent the taxpayer.” See *also* §10.3(g) (“Any individual qualifying under paragraph §10.5(d) or §10.7 is eligible to practice before the Internal Revenue Service to the extent provided in those sections.”). In particular, “[a]n individual may represent a member of his or her immediate family.” 31 C.F.R. §10.7(c)(1)(i). Section 10.7(c)(1) lists other forms of limited practice not relevant here, including, for example, a regular full-time employee may represent an employer who is an individual (§10.7(c)(1)(ii)) and in the case of a foreign-located taxpayer, an individual may represent the taxpayer outside of the United States (§10.7(c)(1)(vii)). Notwithstanding this general authority to engage in limited practice, an individual is ineligible for limited practice if suspended or disbarred from practice before the IRS (§10.7(c)(2)(i)). Additionally, [redacted] may, w/ due process, deny an individual eligibility to engage in limited practice because of conduct subject to Circular 230 sanctions (§10.7(c)(2)(ii)).

The provisions (in §10.3(f)) of Circular 230 concerning practice as a registered tax return preparer (RTRP) are distinct from the limited practice rules for individuals who are listed in §10.7. Section 10.3(f)(3) provides that a “registered tax return preparer may represent taxpayers before revenue agents, customer service representatives, or similar [IRS] officers and employees . . . during an examination if the registered tax return preparer signed the tax return or claim for refund for the taxable year or period under examination.” The scope of this authority to practice as an RTRP does not encompass representation “before appeals officers, revenue officers, Counsel or similar officers or employees” of IRS or Treasury. Those parameters do not apply, however, to individuals described in §10.7(c)(1), including individuals who represent immediate family members.

Before the 2011 amendments to Circular 230, the regulations provided (in former §10.7(c)(1)(viii)) a largely similar arrangement for unenrolled return preparers, whereby an “individual who prepares and signs a taxpayer’s tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or regulations) to sign the tax return” could represent the taxpayer before the IRS in an examination of the tax year or period of the return, but could not represent the client before

Appeals, ROs, Counsel, etc. Although it was then a part of section 10.7 of Circular 230, the prior grant of limited-practice authority to tax return preparers was, like now, a separate provision from the one applicable to representation of immediate family members.

Revenue Procedure 81-38 (Publication 470 (Rev. 1-82)) likewise prescribed rules surrounding the limited practice of unenrolled return preparers. The sole focus of the revenue procedure is on those preparers: "The purpose of this revenue procedure is to prescribe the standards of conduct, the scope of authority, and the circumstances and conditions under which an individual preparer of tax returns may exercise, without enrollment, the privilege of limited practice as a taxpayer's representative before the Internal Revenue Service . . . ." Rev. Proc. 81-38 § 1, 1981-2 C.B. 592. Rev. Proc. 81-38/Pub. 470 does not apply therefore, including its prohibition in section 5.01 against representing a taxpayer in person or through correspondence before Appeals, to representation of an immediate family member. Also, I'm not aware of any comparable restriction elsewhere that constrains limited practice by non-preparers.

I informally coordinated the issue w/ Counsel ( ), and they agreed w/ the conclusion.

Please let me know if you have any questions or if you would like to discuss. Thanks again for your help.